for jurisdiction even where the child is domiciled and actually residing abroad, declaring that chancery, under its power delegated by the crown as *parens patriæ*, has jurisdiction to appoint guardians for infant British subjects. *Hope* v. *Hope* (1854) 4 De G. M. & G. 328; *In re Willoughby* (1885) 30 Ch. D. 324. Whether any courts in the United States could exercise such jurisdiction is doubtful. Should the foreign guardian be found within the jurisdiction the court might take proceedings to have the ward returned, as shown above. Judge Cooley confined his opinion in *In re Jackson*, supra, to the case where the ward is a citizen of the State.

ASSIGNMENTS TO SECURE JURISDICTION ON THE GROUND OF DIVERSE CITIZENSHIP.—It was early held that the federal courts were bound to take jurisdiction on the ground of diverse citizenship only in such cases as should be enumerated by Congress, *Turner* v. *President* (1799) 4 Dall. 8, and that the facts justifying such jurisdiction must be clearly averred. *Bingham* v. *Cabot* (1798) 3 Dall. 382; *Abercrombie* v. *Dupuis* (1803) 1 Cr. 343. The most prevalent methods of gaining undeserved jurisdiction have been by pretended change of citizenship and fictitious assignments. It was soon recognized, in accordance with the view that the general jurisdiction had been granted because of the fear of bias in the State courts, *Turner* v. *President*, supra, that objections of this sort were jurisdictional and not for the opponents' protection from fraud; and as a result the rule was laid down that when averments sufficient to found jurisdiction appear on the record, *Brown* v. *Keene* (1834) 2 Pet. 112, any objection must be considered waived by going to issue on the merits. *D'Wolf* v. *Raband* (1828) 1 Pet. 476; *Smith* v. *Kernochan* (1849) 7 How. 198; *De Sobey* v. *Nicholson* (1865) 3 Wall. 420. By the first judiciary act practically the only controversies in which an assignee might sue in the federal courts, although his assignor might not, were those concerning real property. When the bar of 1 St. at L., § 7, was removed so as to admit assignees of contract rights generally, the courts were protected from the danger of a vast increase in litigation, colorably instituted, by a provision that whenever it appeared that parties were collusively made for the purpose of gaining federal jurisdiction the case should be immediately dismissed or remanded to the State court, *Williams* v. *Nottawa* (1881) 104 U. S. 209; *Morris* v. *Gilmer* (1889) 129 U. S. 315; *Powers* v. *Railroad Co.* (1897) 169 U. S. 92; which protecting clause was held to apply also to the assignments of real property. *Little* v. *Giles* (1886) 118 U. S. 596.

But upon the question as to what assignments should be considered so collusive as to defeat jurisdiction this legislation had no effect. *Farmington* v. *Pillsbury* (1885) 114 U. S. 138. The rule has been left to the later cases, the general result of which is that whenever, even though its sole or partial motive be to gain federal jurisdiction, the assignment is a real one, passing all interest in the right assigned, jurisdiction will be accorded, *Smith* v. *Kernochan*, supra; *Crawford* v. *Neal* (1892) 144 U. S. 585; *Blair* v. *Chicago* (1906) 201 U. S. 400, even though the assignment be for an inadequate consideration, *McDonald* v. *Smalley* (1828) 1 Pet. 620, or for no consideration, *De Laveaga* v. *Williams* (1879) 5 Sawy.

573; *North Dakota* v. *South Carolina* (1904) 192 U. S. 286, and even though the right assigned is an equitable one and leaves the legal estate in the assignor. *Biggs* v. *French* (1835) 2 Sumn. 251. If, on the other hand, the assignor retains substantially all the interest in the right assigned, even though the assignment be absolute in form, jurisdiction will be denied. *Maxwell's Lessee* v. *Levy* (1797) 2 Dall. 381; *Barney* v. *Baltimore* (1867) 6 Wall. 280; *Lake Co. Commr's* v. *Dudley* (1898) 173 U. S. 243. Thus the jurisdiction was upheld in *Browne's Lessee* v. *Browne* (1806) 1 Wash. 429, and *De Laveaga* v. *Williams*, supra, where assignees of large tracts were to retain respectively one-half and one-fourth of the lands recovered, but denied in *Jones* v. *League* (1855) 18 How. 76, and *Farmington* v. *Pillsbury*, supra, where the assignees were to return respectively two-thirds and one-half of the amount recovered, the portions retained being calculated and considered as compensation for expense in bringing suit.

Although the courts have adhered quite steadily to these principles, a recent decision in the Circuit Court of Appeals reaches a result not altogether in accord. A Pennsylvania corporation was insolvent and its counsel procured a resident of New Jersey to file a bill in the federal circuit court for the appointment of a receiver. To this complainant the corporation passed absolute title in one of its bonds concurrently with his signing the bill; and other of its securities were later assigned to him. There was no consideration except the assignee's agreement to file the bill and the assignee was to bear none of the expenses of the proceedings. It was held, one justice dissenting, that, since the assignee's interest was infinitesimal and the suit was, in practical effect, essentially for the benefit of the corporation, the bill was a fraud on the court's jurisdiction sufficient to defeat it. *Kreider* v. *Cole* (1907) 149 Fed. 647.

This reasoning ignores the fact that, while the great interest in the proceedings considered as a whole might be with the corporation, the legal interest in the outcome, as far as the securities assigned were concerned, was absolutely in the assignee whether or not he actually cared about such outcome; for one may purchase stock in a corporation for the very purpose of bringing a stockholder's suit, and the law will not inquire into the motive which actuated the purchase. *Dickerman* v. *Trust Co.* (1900) 176 U. S. 181. The decision, therefore, must stand for the proposition that not the legal standing of the assignee but his actual attitude is the essential matter. The court may appear to be supported in this by the position of *Lehigh Mining Co.* v. *Kelly* (1895) 160 U. S. 327, where a Virginia corporation having formed a corporation of exactly similar composition in Pennsylvania and then assigned all its Virginia property to the new corporation without consideration it was held, three justices dissenting, that, since the Virginia corporation through its identical membership, could actually compel a re-assignment after litigation, the assignment was not such an absolute one as to justify federal jurisdiction. But even that decision was rested specifically upon the potential retention of all interest in the thing assigned and may, therefore, be considered as falling within the generally accepted rule; although it must, indeed, stand as the most doubtful denial of jurisdiction previous to that in the principal case. Since in the latter

case there is no actual or potential retention of interest in the thing assigned, which is the basis for suit of the nature brought, it is to be regretted as evidencing too great solicitude for the federal jurisdiction.

DIVISION OF DAMAGES FOR PERSONAL INJURY IN ADMIRALTY.—In the early codes of admiralty apportionment of damages resulting from collisions was decreed under certain circumstances, apparently on the ground that collision was a common misfortune to be borne by all parties, and depending most logically, it would seem, upon the principles of general average. Hughes on Admiralty, 276; *Bury* v. *Gold* (1647) Marsden's Ad. Cas. 235. The decisions, however, were in hopeless confusion, Marsden's Collisions 157–171, probably because of the obscurity of the origin of the practice and the consequent diversity of reasons given for it. But the English law was finally crystalized in 1824, when, following the classification suggested in *The Woodrop Sims* (1815) 2 Dods. 83, it was decided in the House of Lords that division of damages should be decreed only in cases of mutual negligence, and that such division should be equal, irrespective of the comparative degree of negligence, because under the circumstances of most decisions a satisfactory determination of the comparative negligence of the parties would be impossible, *Hay* v. *Le Neve*, 2 Shaw 395; and this rule was finally adopted in the United States. *The Catherine* (1854) 17 How. 170; though see *The Victory* (1895) 68 Fed. 395, reversed on another ground in 168 U. S. 410. In this development of the collision rule we see at the same time a shifting from the basis of general average contribution as a result of common misfortune to that of sharing damages resulting from mutual fault, and also the adoption of an arbitrary rule for the division of the burden.

In the case of personal injury from mutual negligence a similar rule of division of damages has now been adopted in the United States, though only after a considerable diversity in the lower courts. *The Max Morris* (1890) 137 U. S. 1, and cases cited. But it was not decided whether the division should be equal or whether it should be apportioned according to the fault of each party. In two cases since *The Max Morris* the damages have been equally divided, but whether because the parties were equally at fault or because the collision rule was followed does not appear. *The Serapis* (1891) 49 Fed. 393, reversed on other grounds in 51 Fed. 95; *Johnson & Co.* v. *Johansen* (1898) 86 Fed. 886. But the Supreme Court in *The Max Morris*, though expressly refusing to decide the proper method of division, and though founding its decision on an extension of the collision rule in which it admits equal division is well settled, seems to favor the method of discretionary apportionment. And the majority of the subsequent cases seem to have followed this practice, ordinarily decreeing a fixed amount without stating its proportion to the entire damage sustained. *The Frank and Willie* (1891) 45 Fed. 494; *The Nathan Hale* (1891) 48 Fed. 698; *The Julia Fowler* (1892) 49 Fed. 277; *The J. & J. McCarthy* (1893) 55 Fed. 85. The most recent decision in point leaves its position undoubted by decreeing that since the negligence of the libelant was greater than that of the boat on which he was injured, he